



**THE CITY OF NEW YORK
LAW DEPARTMENT**

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June 17, 2011

BY ECF

Honorable Raymond J. Dearie
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Robert Lemmo v. P.O. Bruce Tulloch
08 CV 4264 (RJD)(LB)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department and one of the attorneys assigned to the defense of the above-referenced matter on behalf of defendant Bruce Tulloch. In that regard, and pursuant to the Court's directive today, annexed hereto please find an email dated June 17, 2011 that plaintiff's sister sent on behalf of plaintiff.

By way of background, by Order dated April 19, 2011, Your Honor scheduled jury selection and trial to begin in the matter on June 20, 2011 at 9:00 a.m. However, according to WebCrim, on the New York State Unified Court System website¹, plaintiff was arrested on June 15, 2011. The Queens County District Attorney's ("DA") Office charged plaintiff on June 16, 2011, under docket number 2011QN033084, with, *inter alia*, one count of Unauthorized Use of a Vehicle in the Second Degree, N.Y.P.L. 165.06, a Class E Felony. Bail was set on that case in the amount of \$25,000 bond or a cash alternative of \$12,500. Plaintiff did not post bail and is currently incarcerated on Rikers Island as a pretrial detainee. Furthermore, plaintiff is scheduled to appear before a Grand Jury on June 20, 2011. By email dated June 17, 2011, sent from plaintiff's email address as listed on the docket sheet and annexed hereto, plaintiff's sister wrote the undersigned that plaintiff "got arrested and cannot make it to the trial on Monday, June 20." Plaintiff's sister further advised that plaintiff "needs to have the trial adjourned or postponed...."

¹ WebCrim is located at http://iapps.courts.state.ny.us/webcrim_attorney/AttorneyWelcome.

The undersigned called plaintiff's sister at the number she provided in the email. She advised the undersigned that plaintiff would not be able to make bail by next week.

Accordingly, defendant respectfully requests that the Court dismiss plaintiff's case pursuant to Fed. R. Civ. P. 16(f)(1) and 37(b)(2)(A)(v) as a sanction for plaintiff's last-minute failure to appear at trial. In the alternative, should the Court adjourn the trial to another date, defendant respectfully requests that the Court warn plaintiff that failure to appear at the new trial date will result in the dismissal of his case.

Defendant thanks the Court for its consideration herein.

Respectfully submitted,

/s/

Philip S. Frank
Assistant Corporation Counsel
Special Federal Litigation Division

cc: By Email and First Class Mail
Robert Lemmo
Plaintiff Pro Se
Book and Case Number: 4411105964
Anna M. Kross Center
18-18 Hazen Street
East Elmhurst, NY 11370
Email: lem567@yahoo.com

Frank, Philip

From: Robert Lemmo [lem567@yahoo.com]
Sent: Friday, June 17, 2011 9:12 AM
To: Frank, Philip
Subject: Robert Lemmo

This is Robert Lemmo's sister, he asked me to email you because he got arrested and cannot make it to the trial on Monday, June 20. His bail is set for \$25,000 and he sees the grand jury on Monday. He needs to have the trial adjourned or postponed until he gets out. My number is 917-208-8835. Thank you.